

No. 10987

United States
Circuit Court of Appeals
For the Ninth Circuit.

RONALD ST. CLAIR BAIN, JR.,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Southern Division

FILED

MAY 24 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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COUNSEL OF RECORD

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United States Attorney

HARRY SAGER,

Assistant United States Attorney,

324 Federal Building,
Seattle, Washington

Attorneys for Plaintiff-Appellee

DELLMORE LESSARD, Esq.,

Corbett Building,
Portland, Oregon

Attorney for Defendant-Appellant.

United States District Court Western District of
Washington, Southern Division
July Term, 1944

No. 15675

UNITED STATES OF AMERICA,
Plaintiff,
vs.

RONALD ST. CLAIR BAIN, Jr.,
Defendant.

INDICTMENT

Violation: Selective Training and Service
Act of 1940

United States of America
Western District of Washington,
Southern Division—ss.

The grand jurors of the United States of America being duly selected, impaneled, sworn, and charged to inquire within and for the Southern Division of the Western District of Washington, upon their oaths present: [*1]

COUNT I

That Ronald St. Clair Bain, Jr., whose true and full name other than as given is to these grand jurors unknown, on or about the 5th day of September, 1944, at Kelso, in Cowlitz County, Washington, then and there being, did then and there knowingly, fail, neglect and refuse to perform a

*Page numbering appearing at foot of page of original certified Transcript of Record.

duty required of him under the Selective Training and Service Act of 1940, and the Rules and Regulations thereunder, in that the said Ronald St. Clair Bain, Jr., did fail, neglect and refuse to report for work of national importance under civilian direction, after having been directed and ordered so to do by Cowlitz County Local Board Number One, Kelso, Washington, the said Local Board then and there having authority to make such order and direction, and the said defendant then and there being a selected man as defined by the Rules and Regulations under said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

S/ J. CHARLES DENNIS

United States of America

S/ HARRY SAGER

Assistant United States

Attorney [2]

Presented to the Court by Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and Filed in the U. S. District Court November 21, 1944.

By S/ GLADYS CHITTY

Deputy Clerk [3]

[Title of District Court and Cause.]

CASH BAIL RECOGNIZANCE

Be It Remembered That on this 14th day of November, 1944, before me the United States Com-

missioner for the Western District of Washington, personally came Ronald St. Clair Bain, as principal, and Ben H. Wright, as surety, and having deposited bail herein in the sum of One Thousand (\$1,000.00) Dollars cash, now acknowledge themselves to be indebted to the United States of America in the sum of \$1,000.00, if default be made in the conditions following, to-wit:

The condition of this recognizance is such that if the said Ronald St. Clair Bain shall personally appear before the United States District Court for the Western District of Washington, Southern Division at Tacoma, Washington, on the 20th day of November, 1944 at 10:00 o'clock A.M. and from day to day and time to time and term to term thereafter, then and there to answer the charges contained in an information filed before L. M. Burnett, United States Commissioner for the Western District of Washington charging the said Ronald St. Clair Bain with a violation of Selective Training & Service Act of 1940, as amended, and the rules and regulation promulgated pursuant thereto, and then and there abide the order of the said Court and not depart from said district without leave of said Court, then this recognizance to be void, otherwise to remain in full force and virtue.

S/ RONALD S. CLAIR BAIN

S/ BEN H. WRIGHT [4]

United States of America,
Western District of Washington,
Southern Division—ss.

I, L. M. Burnett, United States Commissioner for the Western District of Washington, Southern Division, do hereby certify that on this 14th day of November, 1944, personally appeared Ronald St. Clair Bain, as principal, and Ben H. Wright, as surety, in the foregoing bond, to me known to be the individuals described in and who executed the within instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] S/ L. M. BURNETT
United States Commissioner, Western District of
Washington.

Copy endorsed: Filed, Nov. 14, 1944.

L. M. BURNETT,
U. S. Commissioner
No. 328

[Endorsed]: Filed Nov. 17, 1944. [5]

RECORD OF PROCEEDINGS

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 25th day of November, 1944, the Honorable Charles H. Leavy, U. S. District Judge presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal record of said Court:

No. 15675

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD ST. CLAIR BAIN, Jr.,

Defendant.

ARRAIGNMENT AND PLEA

Now on this 25th day of November, 1944, this cause comes on before the court for arraignment and plea. Harry Sager, Asst. U. S. Attorney represents the government. Defendant in court, but his counsel is not present. Mr. Sager advises the court that defendant's counsel Delmore Lessard, from Portland, Oregon, will not be present, but that the defendant has been advised to proceed with the arraignment and that counsel will be present for the trial. Defendant states his true name is Ronald St. Clair Bain, Jr., and states that he will proceed with the arraignment. Defendant arraigned. Mr. Sager reads the Indictment. Defend-

ant now enters a plea of Not Guilty and cause is set for trial on Monday, December 4. [6]

[Title of District Court and Cause.]

VERDICT

We, the jury empanelled in the above-entitled cause, find the defendant, Ronald St. Clair Bain, Jr., is Guilty as charged in Count I of the Indictment herein.

Dated this 4th day of December, 1944.

S/ ALBERT JOHNSON

Foreman

[Endorsed]: Filed Dec. 4, 1944. [7]

United States District Court, Western District of
Washington, Southern Division
July Term, 1944

No. 15675

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD ST. CLAIR BAINE, Jr.,

Defendant.

JUDGMENT AND SENTENCE

Comes now on this 4th day of December, 1944, said defendant, Ronald St. Clair Bain, Jr., into

open court with his attorney, Delmor Lessard, for sentence, after having been found guilty of the offense charged in Count I of the Indictment herein by verdict of a jury duly and regularly empabled to hear the said cause, and being informed by the court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he having made a statement in his own behalf,

Wherefore, by reason of the law and the premises, it is

Ordered and Adjudged by the Court that the said defendant, upon the verdict of the jury, is guilty as charged in the one count of the Indictment herein, and that he be committed to the custody of the Attorney General of the United States of America for imprisonment in such penal institution as the Attorney General of the United States, or his authorized representative may by law designate for the period of Eighteen (18) Months. [8]

And the said defendant is hereby remanded into the custody of the United States Marshal for this District for delivery to the Warden, Superintendent or other person in charge of such institution as the Attorney General of the United States may by law designate, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of commitment, and be recognized by the Warden or Keeper of any Federal Penal Institution as such.

Done in Open Court this 4th day of December,
1944.

CHARLES H. LEAVY

United States District Judge

Presented by:

HARRY SAGER

Asst. United States Attorney

Violation of Selective Training & Service Act
of 1940. (Refusal to respond to Induction order.)

[Endorsed]: Filed Dec. 4, 1944. [9]

RECORD OF PROCEEDINGS

At a regular session of the United States District
Court for the Western District of Washington, held
at Tacoma, in the Southern Division thereof on the
4th day of December, 1944, the Honorable Charles
H. Leavy, U. S. District Judge presiding, among
other proceedings had were the following, truly and
correctly copied from the Journal record of said
court:

No. 15675

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD ST. CLAIR HAIN, Jr.,

Defendant.

TRIAL

Now on this 4th day of December, 1944, this
cause comes on for trial to the court with a jury.

* * * * *

Upon oral motion of Mr. Delmore Lessard, counsel for Defendant, the court orders that defendant may continue at large on present cash bond of \$1000.00 until December 15, 1944, pending notice of appeal. [10]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant through and by his attorney, Dellmore Lessard, and respectfully moves the court for an order granting the defendant a New Trial on account of error committed by the Honorable Trial Court at and during the trial herein in which the Court erroneously

(1) Refused to permit the defendant, after offer made; to present evidence to the jury of his qualifications as a Minister of the Gospel;

(2) Refused to direct the jury to acquit the defendant;

(3) Refused defendant's requested instruction to the jury;

(4) Withdrew from the consideration of the jury the question of alleged error on the part of the Local Draft Board in refusing to grant the classification of IV-d and exempt defendant from training and service under the Selective Service and Training Act.

Dated this 4th day of December, 1944.

S/ DELLMORE LESSARD

Attorney for Defendant.

Presented by

DELLMORE LESSARD

Attorney for Defendant.

Copy received this 8th day of December, 1944.

S/ HARRY SAGER

Asst. U. S. Attorney.

[Endorsed]: Filed Dec. 8, 1944. [11]

[Title of District Court and Cause.]

ORDER OVER-RULING MOTION FOR
NEW TRIAL

This matter coming on regularly for hearing upon motion of Dellmore Lessard, attorney for the defendant, for a New Trial of the above entitled cause, and the Government being represented by Harry Sager, Assistant United States Attorney, and the defendant being present in person and by his attorney; the Court having heard and considered arguments by respective counsel and good cause appearing

It Is Ordered that the Motion for a New Trial by the defendant herein be and the same is hereby Over-ruled.

Dated at Tacoma, Washington this 8th day of December, 1944.

CHARLES H. LEAVY

Judge

Presented by

DELLMORE LESSARD

Attorney for Defendant.

[Endorsed]: Filed Dec. 8, 1944. [12]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Ronald St. Clair Bain, Jr., Route 3, Box 502A, Kelso, Washington.

Name and Address of Appellant's Attorney: Dellmore Lessard, 505 Corbett Bldg., Portland, Oregon.

Offense: Violation of Training and Service Act of 1940 (Refusal to respond to Induction Order).

Date of Judgment: December 4th, 1944.

Brief Description of Judgment or Sentence: Eighteen (18) months in Federal Penitentiary.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

S/ RONALD ST. CLAIR BAIN, Jr.

Appellant

GROUNDS OF APPEAL

1. Errors committed by the Trial Court in (a) Refusing to permit the defendant, after offer made, to present evidence to the jury of his qualifications as a Minister of the Gospel; (b) Refusal to direct the jury to acquit this defendant; (c) Refusal to give defendant's requested instruction to the jury; (d) Withdrawing from the consideration of the jury the question of alleged error on the part of the local Draft Board in refusing to grant [13] the classification of IV-d and exempt the defendant from training and service under the Selective Service and Training Act; (e) Refusal to grant defendant's motion for a New Trial.

2. Error in imposing any sentence on this defendant.

3. Error in finding this defendant guilty.

[Endorsed]: Filed Dec. 8, 1944. [14]

[Title of District Court and Cause.]

SUPERSEDEAS—ORDER

This cause coming on to be heard this 8th day of December, 1944, upon the application of the defendant, Ronald St. Clair Bain, Jr., for an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, and said appeal having been allowed;

It Is Ordered that the same shall operate as a supersedeas, the said appellant having heretofore

given a bond in the sum of One Thousand (\$1,000.00) Dollars cash as provided by law, and the Clerk of this Court is hereby directed to stay the mandate of the District Court of the United States for the Western District of Washington, Southern Division until the further order of this court.

Dated this 8th day of December, 1944.

CHARLES H. LEAVY

Judge.

Presented by

DELLMORE LESSARD

Attorney for Defendant.

[Endorsed]: Filed Dec. 8, 1944. [15]

[Title of District Court and Cause.]

ORDER EXTENDING TIME

This matter coming on regularly for hearing upon motion of Dellmore Lessard, attorney for the defendant, and good cause appearing;

It Is Ordered that the time for filing of the assignment of errors, and the time for settling and filing of the Bill of Exceptions herein, and also the time of filing of the transcript of the proceedings herein with the Clerk of the United States Circuit Court of Appeals, and all other matters in connection with this appeal, be and it is hereby extended to and including the 4th day of February, 1945.

Dated at Tacoma, Washington this 28 day of December, 1944.

CHARLES H. LEAVY

Presented by

DELLMORE LESSARD

Attorney for Defendant.

Received a copy of above order this 28 day of December, 1944.

HARRY SAGER

Asst. U. S. District Atty.

[Endorsed]: Filed Dec. 28, 1944. [16]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Appellant hereby adopts as his points on appeal the assignments of error heretofore placed on file herein.

Dated at Portland, Oregon this 24 day of January, 1945.

S/ DELLMORE LESSARD

Attorney for Defendant and Appellant.

[Endorsed]: Filed Jan. 25, 1945. [17]

[Title of District Court and Cause.]

PRAECIPE TO CLERK

The defendant requests that you prepare a transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal heretofore taken herein, and include in said transcript the following pleadings, proceedings, orders and documents, towit:

1. Indictment
2. Record of plea of not guilty
3. All exhibits, including those of defendant not admitted.
4. Verdict of jury
5. Judgment of Court and sentence
6. Motion for new trial
7. Order denying motion for new trial
8. Notice of appeal
9. Bail bond of defendant
10. Supersedeas—Order
11. Order releasing defendant on bail pending appeal
12. Assignment of Errors
13. Bill of Exceptions
14. All orders extending time
15. Statement of points upon which appellant intends to rely
16. This praecipe

Dated at Portland, Oregon this 24 day of January, 1945.

S/ DELLMORE LESSARD

Attorney for Defendant and
Appellant.

Received a copy of above this 25th day of January, 1945.

S/ J. CHARLES DENNIS

U. S. District Attorney

[Endorsed]: Filed Jan. 25, 1945. [18]

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
State of Oregon,
County of Multnomah—ss.

I, Dellmore Lessard, being first duly sworn, depose and say: That I am the attorney of record for the above named defendant. That the above entitled cause was tried and the defendant sentenced by the court on December 4, 1944. That thereafter the defendant filed his notice of appeal to the Circuit Court of Appeals for the Ninth Circuit. That on December 9, 1944 I ordered a transcript of the record of said trial from Russell N. Anderson, the court reporter, and today received a notice from him that the transcript is now ready and will be sent to me upon payment of the cost of the same. That I have this day mailed my check in the sum

of \$47.70 to said reporter, but probably will not receive the said transcript until after January 1, 1945. That it is necessary that I have a reasonable time in which to study said transcript in order to properly prepare the Assignment of Errors and Bill of Exceptions in this appeal. That a reasonable time, which I ask the court to allow, will be to and including February 4, 1945.

DELLMORE LESSARD

Sworn to and subscribed before me this 27th day of December, 1944.

WINIFRED R. SUINN

Notary Public for Oregon.

My Com. Exp. 2/28/47

Received a copy of above this ... day of December, 1944.

.....

Asst. U. S. District Atty.

[Endorsed]: Filed Dec. 28, 1944. [19]

At a Stated Term, to-wit: The October Term 1944 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday, the fifteenth day of February in the year of our Lord one thousand nine hundred and forty-five.

Present:

Honorable Curtis D. Wilbur, Senior Circuit
Judge, Presiding,

Honorable Francis A. Garrecht, Circuit Judge,

Honorable William Healy, Circuit Judge.

No. 10987

RONALD ST. CLAIR BAIN, Jr.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO SETTLE AND
FILE BILL OF EXCEPTIONS

Upon consideration of the application of Mr. Dellmore Lessard, counsel for appellant, and of the affidavit in support thereof, and by direction of the Court,

It Is Ordered that the time within which the bill of exceptions may be settled and filed be, and hereby is extended to and including March 15, 1945.

I hereby certify that the foregoing is a full, true and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 15th day of February, 1945.

(Signed) PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed Feb. 20, 1945. [20]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL EXHIBITS

On motion of Dellmore Lessard, attorney for the defendant in the above entitled case, and for good cause shown,

It Is Ordered That all of the exhibits introduced by both parties, and all exhibits produced and marked for identification on the part of the defendant, but not admitted in evidence, be transmitted by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit in their original form.

Dated this 5th day of Mar., 1945.

CHARLES H. LEAVY

Judge.

Presented by

DELLMORE LESSARD

Attorney for Defendant.

[Endorsed]: Filed Mar. 5, 1945. [21]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing Transcript of the Record on Appeal, consisting of pages numbered 1 to 21, inclusive, is a full, true and correct copy of so much of the record, papers and proceedings in Cause 15675, United States of America, Plaintiff, vs. Ronald St. Clair Bain, Jr., Defendant, as required by Praecept of Defendant-Appellant, on file and of record in my office at Tacoma, Washington, and the same constitutes the Transcript of the Record on Appeal from the Judgment of the United States District Court for the Western District of Washington, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the original Bill of Exceptions, as certified by the Judge of the said District Court, consisting of pages numbered 1 to 6, inclusive, and the original Assignment of Errors

herein, consisting of one page, are transmitted herewith.

I do further certify that pursuant to Order of the District Court the original exhibits, marked for identification, and/or admitted in evidence, being Plaintiff's Exhibits numbered 1 to 18, inclusive, and Defendant's Exhibits, numbered A-1 to A-11, inclusive, are transmitted herewith. [22]

I do further certify that the following is a full, true and correct statement of all expenses, fees and charges incurred by me on behalf of the Defendant-Appellant herein in the preparation and certification of the said Transcript of the Record on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Appeal fee\$5.00

To Clerk's fee for preparing and
certifying Transcript of Record..... 3.75

\$8.75

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Tacoma, in the Western District of Washington, this 14th day of March, 1945.

[Seal]

MILLARD P. THOMAS,

Clerk

By E. E. REDMAYNE

Deputy [23]

United States District Court, Western District of
Washington, Southern Division
July Term, 1944

No. 15675

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD ST. CLAIR BAIN, Jr.,

Defendant.

ASSIGNMENT OF ERRORS

Comes now the defendant and appellant, Ronald St. Clair Bain, Jr., and files the following Assignment of Errors upon which he is relying on appeal to the United States Circuit Court of Appeals for the Ninth Circuit:

I.

That the Court erred in that the Court withdrew from the consideration of the jury during the trial all consideration of whether or not the Local Selective Service Board or the Appeal Board committed error in refusing to grant defendant exemption from training and service under the Selective Service Act as a minister of the Gospel, and excluded all evidence pertaining thereto.

II.

That the Court erred in refusing to give defendant's requested instruction to the jury.

III.

That the Court erred in denying defendant's motion for a directed verdict of "Not Guilty."

IV.

That the Court erred in denying defendant's motion for a judgment of acquittal notwithstanding the verdict, or in the alternative for a new trial.

V.

That the Court erred in finding and adjudging the defendant guilty.

DELLMORE LESSARD

Attorney for defendant

A true copy received Jan. 25, 1945.

J. CHARLES DENNIS

U. S. Attorney

[Endorsed]: Filed Jan. 25, 1945.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered That the above entitled case came on regularly for trial on the 4th day of December, 1944 in the above entitled Court at Tacoma, Washington, before the Honorable Charles H. Leavy, Judge Presiding. A jury having been duly empaneled and sworn as by law provided. The United States of America appeared by Mr. Harry

Sager, Assistant United States District Attorney. Defendant appeared in person and by his attorney, Mr. Dellmore Lessard.

The appealing defendant respectfully submits the following Bill of Exceptions:

EXCEPTION No. 1

That after the government had rested, and during the trial of this cause the defendant made an offer of proof of the following facts: (page 45 transcript)

“Mr. Lessard: Well, if the Court please, I desire the defendant to prove that he is a minister of the gospel, devoting his whole time to the work as a minister, with the exception of such time as necessary to earn a living to support himself and wife, and he is one of Jehovah’s Witnesses, and that he has had that belief for a number of years, and based upon that belief, he refused to report at the conscientious objector’s camp, because to do so would be in conflict with his religious belief. . . .

“Further, that the action of the board in classifying him in 4-D was capricious, arbitrary and that the board did not give him his exemption to which he is lawfully entitled as a minister of the gospel.

“The Court: Your offer of proof will be denied, and exception allowed. . . .

(page 42 transcript)

“The Court . . . I shall have to deny your application, your motion to—your challenge to the sufficiency of the evidence and your motion to dismiss, and likewise deny your application to make proof

on the issue of good faith of the draft board and the appeal board, and on the issue of whether or not they were arbitrary, capricious and acting without any facts to support their conclusion, and allow you an exception. . . .

(page 43 transcript)

“The Court: I am not prepared to say that. I am willing to let that responsibility rest upon the shoulders of the Ninth Circuit, rather than upon my decision. I shall hold, and do hold, as I stated before that the Falbo case is controlling in the set of facts here, and that therefore evidence of any arbitrary, capricious action in a criminal prosecution is not admissible.”

EXCEPTION No. 2

The plaintiff and defendant having concluded and submitted their evidence, the defendant thereupon requested the judge to give an instruction substantially as follows:

“The Court hereby instructs you that if you find that the local selective service board erroneously classified defendant in Class IV-E, or that the defendant was entitled to a classification of IV-D as a minister of the Gospel, the order of said board would then be void and of no effect and defendant would not be required to obey said order, and your verdict should therefore be, if you so find, not guilty.”

But the Court refused to give such charge, and to which refusal the defendant excepted.

EXCEPTION No. 3

That after both parties had rested the defendant moved the court for a directed verdict of "Not Guilty," but that the Court denied said motion, and allowed an exception.

EXCEPTION No. 4

The Court thereupon gave the following instructions to the jury:

"The material allegations of the indictment and the essential elements of the offense which the Government must prove beyond a reasonable doubt are:

"1. That the defendant was registered under the Selective Service Training & Service Act.

"2. That he had been classified as a person assigned to work of national importance.

"3. That on or about September 5, 1944, he was directed and ordered to report for work of national importance under civilian direction, by his draft board; and

"4. That he knowingly failed, neglected, or refused to report for such work when so ordered.

"If you find from the evidence in this case beyond a reasonable doubt that the defendant, after being registered under the Selective Training & Service Act, and being classified by Local Draft Board No. 1, Shoshone County, Idaho, as a conscientious objector, and thereafter was transferred to Cowlitz County Board No. 1 at Kelso, Washington, for induction, and that he was notified and ordered to report for work of national importance under civilian direction by that draft board, and

that he knowingly failed, neglected or refused to so report when so ordered, then you would find him guilty as charged in the indictment herein.

“If you fail to find each of these essential facts as I have here enumerated them to you, it would be your duty to acquit the defendant.

“You are instructed that the Selective Training & Service Act of 1940 is constitutional, and if you find from the evidence beyond a reasonable doubt that the defendant violated the Act in the manner charged in the indictment, and as I have indicated to you in this charge, you should bring in a verdict of guilty. On the other hand, as I have already stated to you, if the Government has failed to prove the charges contained in the indictment, by evidence beyond a reasonable doubt, then you will acquit the defendant.

“You are instructed that persons obliged to register under the Selective Training & Service Act of 1940 are not entitled to any particular classification, nor to exemption or deferment as a matter of right. Discretion to determine the proper classification of a registrant, or whether a registrant is entitled to exemption or deferment, is reposed by the Act in the President of the United States, and the local draft board, or other agencies which have been set up under the Act for the purpose of administering it. In accordance with the provisions of the Act and the rules and regulations thereunder, the local draft boards are given the power and the authority, and it is their duty to classify their

registrants. Whether or not a registrant is entitled to be classified as a conscientious objector or as a minister of religion, presents a question of fact, which, from its very nature, is committed to the determination of the local draft board, and when a draft board has determined the classification of a registrant, its findings in that respect are final, unless reversed by appeal, provided by the law and the regulations."

"So, if you find in this case that Local Board No. 1, of Shoshone County, Idaho, considered the claim of the defendant to be classified as a Minister of Religion, and thereafter denied him that classification and the deferment he requested, but classified him as a conscientious objector, such action and such a classification of the board is binding upon this court, and upon you as jurors, and neither you, as jurors, nor I, as judge, have any right to question it."

To the giving of said charge the defendant excepted and exception was granted by the Court.

EXCEPTION No. 5

The said cause having been submitted to the jury by the Court under its charges, and the jury having rendered a verdict against the defendant, on December 4th, 1944, at the term of Court aforesaid, the defendant made and submitted to the said Court his motion for a judgment notwithstanding the verdict of the jury, and in the alternative for a new trial, on the ground of error committed by the trial judge at the time of trial in that the trial judge

refused to give the charge submitted by the defendant, and in that the trial judge in his charge to the jury withdraw from their consideration the question of whether or not the local selective service board which had jurisdiction of the defendant had been guilty of arbitrary, capricious or unlawful conduct in refusing to give defendant the classification of IV-D and thereby exempt him from training and service, or in giving him the classification of IV-E without proper ground therefor.

On December 4th, 1944, the said motion came on to be heard, and upon consideration of said motion the court on the same day denied the same, to which ruling the defendant excepted.

In connection herewith there is hereto attached a full transcript of the testimony introduced at the trial, and all exhibits introduced by the government and all exhibits offered by the defendant, and made a part of this Bill of Exceptions.

DELLMORE LESSARD

Attorney for defendant and
appellant.

United States of America,
State of Washington,
County of Pierce—ss.

It Is Hereby Certified that on the 28th day of December, 1944, the Honorable Charles H. Leavy, Judge of the above entitled Court, for good cause shown entered an Order allowing defendant, Ronald St. Clair Bain, Jr., to have to and including the 4th day of February, 1945 for settlement and filing of

Bill of Exceptions and Assignment of Errors, in respect to the within appeal.

It further appearing that there is attached hereto a full transcript of the testimony offered in the above entitled case and all exhibits introduced by the government and exhibits offered by the defendant, the Exceptions is by me allowed and signed this 5th day of March, 1945.

CHARLES H. LEAVY

Judge of the District Court of the United States
for the Western District of Washington, Southern Division.

State of Washington,
County of Pierce—ss.

Due service of the within Bill of Exceptions is hereby accepted in Pierce County, Washington, this 25 day of January, 1945, by receiving a copy thereof, duly certified to as such by Dellmore Lessard, attorney for defendant and appellant.

J. CHARLES DENNIS

U. S. District Attorney

Presented by

DELLMORE LESSARD

Attorney for defendant and
appellant.

[Endorsed]: Filed Mar. 5, 1945.

[Endorsed]: No. 10987. United States Circuit Court of Appeals for the Ninth Circuit. Ronald St. Clair Bain, Jr., Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

Filed March 20, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10987

RONALD ST. CLAIR BAIN, Jr.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH AP-
PELLANT INTENDS TO RELY ON APPEAL

Appellant hereby adopts the Statement of Points appearing in the transcript of the record herein, and which are the same as his Assignments of Error, as the points upon which he intends to rely on appeal.

Dated at Portland, Oregon this 28th day of March, 1945.

DELLMORE LESSARD

Attorney for appellant.

DESIGNATION OF RECORD FOR PRINTING

Appellant hereby designates the entire certified transcript for printing, save and except the exhibits introduced by the government, and those offered by the appellant but not admitted, and requests that said exhibits be considered by the court in their original form.

Dated at Portland, Oregon this 28th day of March, 1945.

DELLMORE LESSARD

Attorney for appellant.

[Endorsed]: Filed March 30, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION THAT EXHIBITS MAY BE
CONSIDERED IN ORIGINAL FORM

Whereas, the exhibits introduced by appellee at the trial of the above entitled cause and the exhibits of the defendant offered, but not admitted in evidence are of great length and the expense of printing the same would be great;

It Is Therefore Stipulated that, subject to the approval of the Court, the said exhibits need not be printed as part of the transcript of the record, but may be considered by the Court in their original form.

Dated this 28th day of March, 1945.

DELLMORE LESSARD

Attorney for appellant

HARRY SAGER

Attorney for appellee

So Ordered

CURTIS D. WILBUR

Senior United States Circuit
Judge

[Endorsed]: Filed April 2, 1945. Paul P. O'Brien, Clerk.